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20 PRINCIPLES FOR EFFECTIVE REGULATIONS

A Primer for Agencies

- *What We've Learned through the
Massachusetts Regulation Review
Process*
- *Where to Go from Here*

Argeo Paul Cellucci, Governor
Charles D. Baker, Secretary of Administration & Finance

Written by: Bruce Stanford

Principal Editors: Susan Beck
Steve Kadish
Rachel Madden
Michael Kan
Virginia Greiman

Senior Editor: Charles D. Baker



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE FOR
ADMINISTRATION AND FINANCE
STATE HOUSE • ROOM 373
BOSTON, MA 02133

ARGEO PAUL CELLUCCI
GOVERNOR

CHARLES D. BAKER
SECRETARY

TEL: (617) 727-2040
FAX: (617) 727-2779

December 17, 1997

To Cabinet Secretaries, Agency Heads, Agency Counsel, and other Agency Personnel:

The Regulation Review Project has been a significant accomplishment for this Administration. Philip K. Howard, author of *The Death of Common Sense*, told me that the Massachusetts Project is far beyond what any other state has proposed or accomplished. He calls it "the most comprehensive effort of its kind in the nation." I want to thank the Regulation Review Project Team and all of you for your participation in this critical Project.

We must now preserve our accomplishments and ensure that the Commonwealth does not fall back into the excess and convoluted regulation of the past. One important tool for preserving and building on our accomplishments under Executive Order No. 384 is *20 Principles for Effective Regulations: A Primer for Agencies*. The Principles set out in this Primer derive from the checklist process the Project Team developed. I urge you to use it.

Be sure that you also have three other Project Team publications: **A Readability Guide: How to Write Readable Regulations; Cost-Benefit Analysis and other Strategies for Effective Regulations; and Brown Bag Luncheon Handout on Sub-Regulations**. Adhering to the principles set out in these guides and this Primer should help you to institutionalize the achievements of the Regulation Review Project.

Thank you again for your contributions to our success.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles D. Baker".

Charles D. Baker
Secretary





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INTRODUCTION

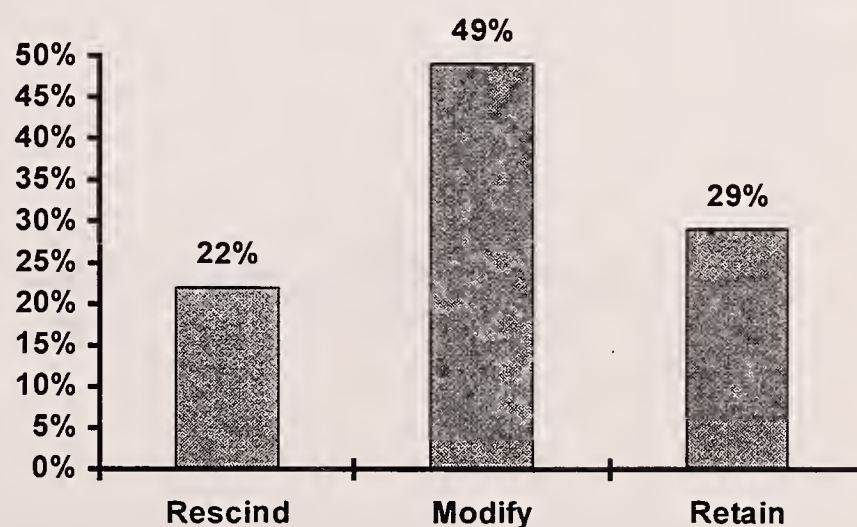


Welcome to this compendium, which incorporates many of the lessons learned in undertaking the Commonwealth of Massachusetts' Regulation Review Project an unprecedented successful review of over 90 years of regulations.

The Project began with Governor Weld's Executive Order 384, issued on February 7, 1996. This order called for an unprecedented analysis of the 26 volume Code of Massachusetts Regulations. As an initial step, it instructed all agencies to comprehensively review every regulation within their respective jurisdictions. Further, it directed that by December 31, 1996, "only those regulations ...mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's citizens" were to be retained or modified.

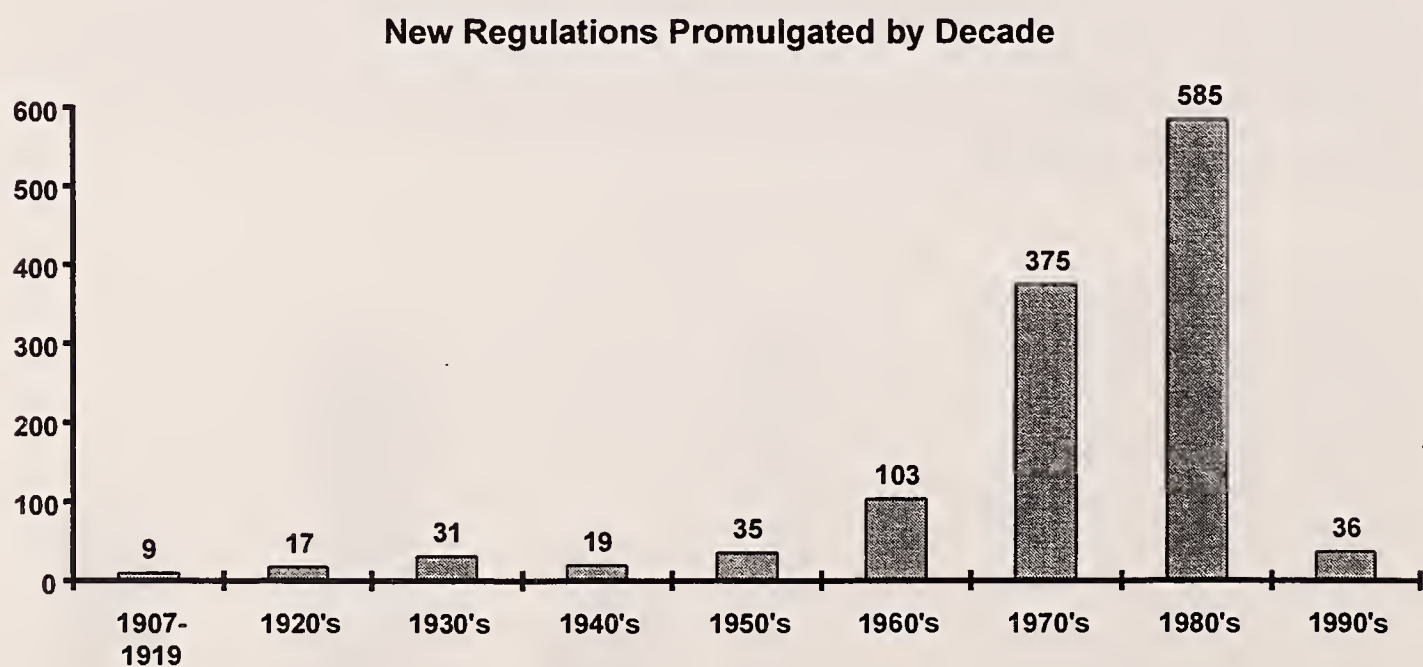
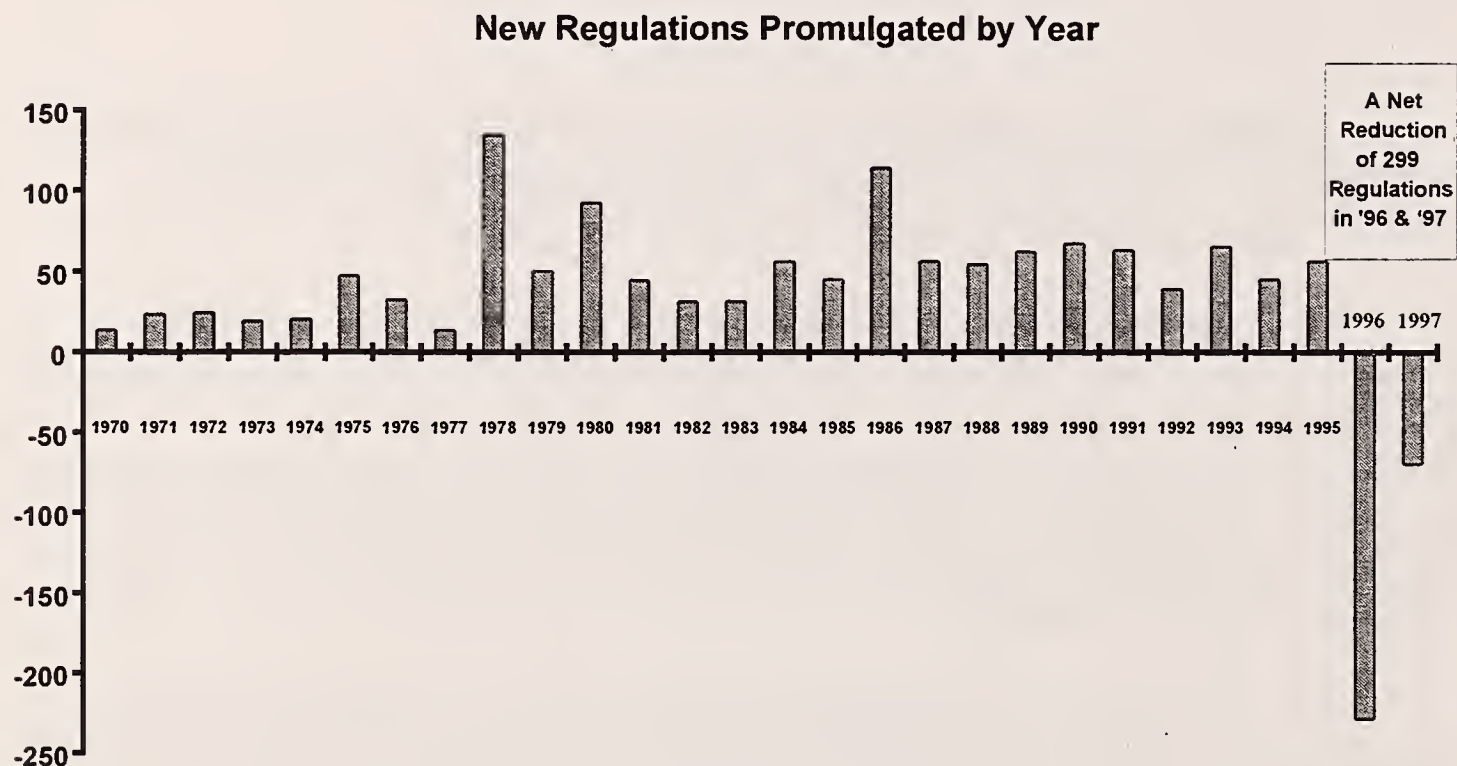
An Administration and Finance Project Review Team managed this ambitious undertaking, assembling a network of key contacts at each of the 132 agencies involved with the regulation initiative. Agency personnel reviewed all 90 years worth of existing regulations, over 1,600 in number, and made decisions about rescinding, modifying or retaining them. In cooperation with the Project Team, agency personnel then developed workplans which explained the activities, timetables and impacts of their proposed modifications and rescissions.

Together, the agency workplans called for a rescission of 22% of the existing regulations and a modification of 49% of them. Only 29% were to be retained in their existing form. In all, one of every five regulations was to be rescinded and three of every four pages rescinded or modified.



By December 31, 1996, 70% of the workplan proposals had been fully carried out.

The accompanying graphs illustrate the effectiveness of the Regulation Review Project in curtailing the expansion of regulatory activity in the Commonwealth. This activity had increased steadily from the early 1900's and then exploded, beginning in the 1970's. The Project dramatically reversed this trend, generating a net reduction of 299 regulations in 1996 and the first half of 1997.



The Project's remarkable accomplishments resulted, in large part, from the systematized analysis of every regulation which was made an inherent part of the review project. The Project Team developed an electronic checklist which catalogued the key considerations in issuing effective regulations. For every rescission or modification an agency proposed to make, the agency had to complete a checklist and submit it to the

Project Team for approval. Working through a checklist led the agency through an organized deliberation about each of the key considerations.

The Regulation Review Project stands out as a tremendous and unanticipated success. Faced with the task of leading 132 separate agencies through a review of over 1,600 regulations in the short space of ten months, the Project Team achieved impressive results. This Primer has been prepared to perpetuate these results. We urge all agency personnel to closely consult this Primer in all their rule-making activity. Doing so will ensure a continuation of the important accomplishments of the Regulations Review Project.

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20 Principles for Effective Regulations



This chart summarizes fundamental principles for writing effective regulations. To achieve maximum effectiveness in your regulatory process, attend carefully to each of them. You will find a discussion of the principles in the following pages.

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Section 1: Preliminary Considerations

- Principle 1 Determine the most appropriate rule-making response to a new mandate, business requirement or other procedural change.
- Principle 2 Involve other agency personnel in considering what to do.
- Principle 3 Review existing laws, regulations, policies and procedures.
- Principle 4 Identify and coordinate cross jurisdictional issues with other state agencies.
- Principle 5 Solicit input from interested and regulated parties about what and how you propose to regulate.
- Principle 6 Issue less formal rules instead of regulations whenever possible.
- Principle 7 Promulgate a regulation only if “essential” or “mandated by law.”
- Principle 8 Promulgate a regulation only if its costs do not exceed its benefits.
- Principle 9 Consider regulating with market oriented solutions and performance standards.
- Principle 10 Incorporate by reference federal regulations or other professional or technical standards when appropriate.
- Principle 11 Promulgate regulations which minimize the burden of compliance.

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- Principle 12 Write the regulation in the most succinct form possible while preserving its effectiveness.
- Principle 13 Write the regulation in plain and readily understandable language.
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- Principle 17 Work with the Secretary of State’s Office.
- Principle 18 Involve other agencies in the promulgation process.
- Principle 19 Publish a public hearing notice which informs interested and regulated parties about the nature and scope of proposed regulatory changes.
- Principle 20 Carefully consider public input before finalizing the regulation.

SECTION 1

PRELIMINARY CONSIDERATIONS BEFORE DRAFTING THE REGULATION



PRINCIPLE 1: Determine the most appropriate rule-making response to a new mandate, business requirement or other procedural change.

- A. Whenever an agency contemplates exercising its rule-making authority, it should, promptly consider the new mandate, business requirement or change in procedure which prompted the rule-making activity. It should consider the source of the change, i.e., statutory revision, court judgment or administrative procedure, and so on. It should especially consider what would be the most appropriate type of rule-making in the particular situation. The change might result in a rescission, modification or no change at all in the agency's body of rules and procedures.
- B. A regulation is not always the most appropriate response to a new mandate. A regulation is just one of a number of rule-making techniques. Each has advantages and disadvantages. Instead of adopting a regulation, an agency might issue a new policy or guideline.

If an agency concludes that promulgating a regulation is the most appropriate response to a change in mandate or procedure, it should consider whether the act of promulgating that regulation should constitute only a piece of an over-all strategy, rather than the entire response. It should also consider whether its response should include such changes as:

- a) Alterations in business procedures.
- b) Modifications in the agency's use of computer communication technology to disseminate and receive information from its customers, the general public and/or regulated parties.
- c) Amendments in other agency publications, such as guidelines, manuals and forms.

PRINCIPLE 2:* *Involve other agency personnel in considering what to do.

As an inherent part of all rule-making activity, an agency should involve a cross-section of agency personnel. Each group of agency personnel brings a different perspective. The broader the population participating in the promulgation process, the more effective the resultant rule-making should be.

- 1) The policy makers should play a role in all aspects of the promulgation process.
- 2) The “business” or “program” people, those who actually work on the particular activity addressed by the prospective rule-making, should always participate.
- 3) Since regulations possess legal authority, staff attorneys or agency counsel should participate in formulating, drafting and reviewing rules and regulations.
- 4) If rule-making has financial implications, the financial people should also be involved.

PRINCIPLE 3:* *Review existing laws, regulations, policies and procedures.

Agencies should review relevant existing laws, regulations, policies and procedures, as well as those of other agencies, whenever engaged in rule-making. Each exercise of rule-making authority offers a fresh opportunity to eliminate redundant and/or inefficient activities and otherwise streamline and coordinate the body of an agency’s rules and regulations.

PRINCIPLE 4: Identify and coordinate cross jurisdictional issues with other state agencies as an integral part of the rule-making process.

A. Agency responsibility

Before promulgating a regulation or sub-regulation, you are responsible for determining whether the subject matter of the proposed regulation involves other agencies or jurisdictions. If it does, you should identify and contact those agencies or jurisdictions to involve them actively in the promulgation process.

B. Agency Cooperation

Agencies should cooperate and coordinate their rule-making activity to ensure that their regulatory requirements do not:

- 1) Impose conflicting demands on regulated or interested parties.
- 2) Overly burden regulated parties by requiring them to interact directly with more agencies than necessary. To the extent possible, agencies should attempt to provide “one-stop shopping” for regulated parties.

C. Joint Rule-Making

Agencies with overlapping authority should consider participating in joint rule-making in order to avoid duplicative demands on regulated parties. They might issue joint regulations or join in memoranda of understanding or letters of agreement. Such cooperative efforts streamline administrative oversight and ensure more uniform compliance.

Example:

“The Hazardous Waste Facility Site Safety Council and the Department of Environmental Management (DEM) jointly promulgated 990 CMR 1.00 through 16.00 to assist in the implementation of the Massachusetts Hazardous Waste Facility Siting Act, G.L. c. 21D.”

D. Auxiliary Benefit

Consulting your peers in other agencies will result in the development of mutual rapport. Extending courtesy to them will result in their returning the same courtesy, improving the ability of both agencies to serve the public in a more efficient and coordinated way.

E. Federal Agencies

Where the federal government and a state agency have both promulgated regulations relating to the same or a similar activity, the state agency should compare its regulations with the federal requirements. The agency should consider the feasibility of incorporating the federal regulations by reference. (See discussion of incorporation by reference, below.)

<i>PRINCIPLE 5:</i> Solicit input from regulated and interested parties.

A. General Considerations

Customers have important experience that can help identify issues and propose answers relating to most rule-making. Therefore, except in the case of emergency regulations or technical corrections, always seek public input in the rule-making process.

B. Gathering Public Input

If you have developed effective procedures to communicate with your key constituency/interest groups, utilize those procedures to gather input about any proposed rule-making. Appropriate procedures include regularly scheduled meetings, bulletins, news letters, work groups and notices. If you have not developed such procedures, consider what methods to use as part of this preliminary stage of rule-making. In addition to sending bulletins or news letters, you might, for example, hold public, informational meetings, or use electronic communication technology to establish an Internet home page to post information.

PRINCIPLE 6: Issue less formal rules instead of regulations whenever possible.

A. General Considerations about Sub-Regulations

- 1) Promoting brevity in the Code of Massachusetts Regulations in order to preserve its effectiveness

Some people think that including all possible particulars in a regulation gives people the clearest guidance about the regulated activity. Clearly, however, if all agencies were to promulgate regulations in accordance with this premise, the result would be a code so massive and detailed that no person would be able to know it. Such a code would lose its effectiveness as a guide for human action. See The Death of Common Sense by Philip K. Howard.

An ideal way to control the growth and complexity of the Code of Massachusetts Regulations, thereby helping to sustain its effectiveness, is to issue a sub-regulatory rule, rather than a regulation, whenever appropriate.

At the same time, agencies should not indiscriminately change regulations to sub-regulations. They should write regulations when “essential” or “mandated by law.”

- 2) Advantages of issuing sub-regulations

Issuing less formal rules offers a number of advantages. For example:

- a) Since less formal rule-making does not require the formal notice and input process necessary for a regulation, you can update or modify your sub-regulations more quickly and easily.
- b) You can tailor sub-regulations to a small a select group.
- c) You can vary the format for communicating the rules, choosing from among such alternatives as manuals, guidebooks, bulletins, letters, etc.

3) Deference given to regulations and sub-regulations

When determining whether to promulgate a regulation or a less formal rule, you should consider whether the particular circumstances require a rule with the force of law. Regulations and sub-regulations may differ with respect to the degree of deference given them by courts. For example, a policy not well-established may not be given deference.

Massachusetts courts give the greatest deference to regulations. In Borden, Inc. v. Commissioner of Public Health, 388 Mass. 707 (1983), the Supreme Judicial Court said, "A regulation promulgated in accordance with the requirements of Chapter 30A has the force of law...and must be accorded all the deference due to a statute.... Thus, [a court] must apply all rational presumptions in favor of the validity of the administrative action and not declare it void unless its provisions cannot by any reasonable construction be interpreted in harmony with the legislative mandate."

At the same time, less formal rules sometimes receive great deference, as well. For example, in Newton v. Commissioner of Revenue, 384 Mass. 115 (1981), the court upheld the Commissioner's guidelines, stating, "The Commissioner's authority to issue guidelines implementing a Statewide property tax scheme requiring a measure of uniformity is beyond debate. The Commissioner has the power to issue guidelines which comprehend 'the administration of all laws providing for the assessment and classification of property.'"

Ultimately, the degree of deference a court gives to a less formal rule may depend on the court's assessment of the agency's position. Where a court determines that an agency's policy decision issued as a less formal rule is sound, it may support the less formal rule and elevate it to a higher position.

While a regulated party may not be bound by an agency's less formal rules, the courts have held that the agency, itself, is bound. In Commissioner of Revenue v. Baybank Middlesex, 421 Mass. 736 (1996), the court said, "Although courts give the force of law only to formal agency regulations, administrative agencies must abide by their own internally promulgated policies.... This is true regardless whether the policy exists pursuant to a formal rule or an informal guideline."

B. Public Notice and Sub-Regulations

The fact that issuing sub-regulations does not require the formal notice and comment requirements of G.L. c. 30A does not mean that agencies should issue less formal rules without any notice or comment. Rather, agencies should consider and obtain appropriate participation from their constituents whenever possible. Courts are more likely to give deference to a sub-regulation if an agency engaged public input in the formulation of the rule. In any case, public input is bound to result in more informed and effective policy, no matter how that policy is carried out.

C. When to Promulgate Regulations

Ultimately, the courts have not provided distinct guidance about when to issue a regulation and when to promulgate a less formal rule. They have, however, identified a number of criteria for agencies to consider when making choices. The criteria do not define absolutes. Rather, they provide factors which should be weighed. These criteria suggest agencies should incline toward promulgating regulations when the rule-making:

- 1) Involves a complex and pervasive subject.
- 2) Presents difficulties in compliance.
- 3) Raises particular concerns about challenges and litigation.
- 4) Defines substantial monetary entitlements.
- 5) Defines a substantial property right of a regulated person.
- 6) Presents a substantial need of certainty.
- 7) Has general application and future effect.
- 8) Articulates a material change of policy.
- 9) Elucidates a statutory ambiguity.

D. When to Issue Sub-Regulations

On the other hand, the criteria identified by the courts suggest that agencies may incline toward issuing sub-regulations when the rule-making:

- 1) Communicates information.
- 2) Informs the public what factors the agency will consider when enforcing certain rules, policies or procedures.
- 3) Communicates an agency's position about how it interprets some rule, matter or issue.
- 4) Informs an agency's constituency about something new.
- 5) Sets out management rules not requiring force of law.
- 6) Tightens or elaborates existing practice.

E. Accessibility of Sub-Regulations

You should ensure that your agency makes all sub-regulatory material accessible to the public. For example, you should send your customers all new manuals, bulletins and guidelines, as well as all amendments to these documents. You might, in addition, communicate information about these documents by sending out newsletters or holding public meetings. Moreover, you could also post this material on an Internet home page.

PRINCIPLE 7: Promulgate a regulation only if “essential” or “mandated by law.”

A. Threshold Consideration

When considering the promulgation of a regulation, you should determine, as a threshold matter, whether the proposed regulation is:

- 1) Mandated by law, or
- 2) Essential to the health, safety, environment or welfare of Massachusetts citizens.

No agency should ever promulgate any regulation which does not clearly satisfy at least one of these criteria.

If you believe that a rule would benefit interested or regulated parties, but you cannot clearly demonstrate that a regulation is mandated by law or essential to the health, safety, environment or welfare of Massachusetts citizens, consider issuing a less formal rule. Such a rule might be formulated in a letter, policy guideline, form, brochure, guideline, handbook, manual, notice, newsletter or technical information release. (See discussion of less formal rules, below.)

B. Regulations Mandated by Law

A regulation is “mandated by law” only if the Legislature, in some general or special law, expressly orders an agency to promulgate a regulation.

For example, G.L. c. 94C, §7 specifically mandates a regulation. It states, “The commissioner shall promulgate regulations which provide for the registration of physicians assistants to issue written prescriptions for patients pursuant to guidelines mutually developed and agreed upon by the supervising physician and the physician assistant.”

On the other hand, G.L. c. 7A, §7 gives broad regulatory discretion to the CMR. It states: “[T]he comptroller may promulgate regulations necessary to carry out the provisions of this section.” This statute gives broad discretion to the Comptroller to determine when a regulation is “essential.” It does not mandate the promulgation of a regulation.

Unless a statute mandates the promulgation of a regulation, as in G.L. c. 94C, §7, you should promulgate a regulation only if you determine that a regulation is “essential.”

C. Essential Regulations

- 1) A regulation is essential only if it is imperative to the health, safety, environment or welfare of Massachusetts citizens.
- 2) A regulation is essential, if you determine that:
 - a) There is specific, clearly identifiable and precisely defined need for governmental intervention. You should be able to identify some risk the regulation would avert.
 - b) The costs the regulation imposes do not exceed its benefits. (See discussion of cost-benefit analysis, below.)
 - c) Less formal alternatives, such as a bulletin, manual or guideline, would be ineffective or inappropriate in the particular situation.

PRINCIPLE 8: Promulgate a regulation only if its costs do not exceed its benefits.

A. Consult Cost-Benefit Analysis and other Strategies for Effective Regulations.

In October of 1996, the Regulations Review Project Team, under the auspices of A&F, published a guide entitled Cost-Benefit Analysis and Other Strategies for Effective Regulations. This guide provides sound information and advice about taking cost-benefit issues into consideration in the rule-making process. You should regularly consult this volume when you draft regulations. If you do not have a copy, you may obtain one from A&F.

B. General Considerations

The importance of cost-benefit considerations varies according to the nature of the regulation. The greater the intended impact, both in scope and in cost, of either a regulatory change or a new regulation, the more detailed and comprehensive should be the cost-benefit analysis. Regulations of minor impact require comparatively little cost-benefit analysis.

Quantifying monetary and intangible costs also varies in difficulty from regulation to regulation. The process always entails some level of uncertainty. However, you should be as explicit as possible with all your assumptions, estimations and judgments, so that those reviewing the regulation can understand the basis of each policy determination.

You should perform your cost-benefit analyses using high, low and likely scenarios, basing your examinations upon the best scientific, technical and economic information that can reasonably be obtained.

In the process of identifying the parties affected by a regulatory initiative, you should consider categorizing the impact of that initiative by sub-population. For example, where the proposed change will affect people differently by geographic location, age, gender, size or industry, you should identify and separate the impacts.

Even small impacts add up quickly over numerous transactions. For example, eliminating a permit that requires an hour to fill out and an hour for a staff person to review multiplied by 2,000 transactions equates to two person-years of time. Similarly, eliminating a \$20 application fee for 30,000 applications saves \$600,000 for a regulated community.

C. Cost-Benefit Summary

In performing cost-benefit analyses, you should:

- 1) Perform progressively detailed and comprehensive studies as the expected impact of a regulation increases.
- 2) Include estimates of the high, low and likely cases in your analyses to account for the uncertainty of costs.
- 3) Describe as fully as possible in qualitative terms all hard-to-quantify impacts.
- 4) Be explicit about the assumptions, estimates, tradeoffs and values incorporated in your analyses.
- 5) Identify sub-groups of affected parties where appropriate.
- 6) Remember that even small improvements in a regulation can lead to large cost savings when multiplied by a large number of transactions.

PRINCIPLE 9: **Consider regulating with market oriented solutions and performance standards instead of regulations which command and control.**

A. General Considerations

Sometimes, for reasons such as public safety or environmental preservation, regulations must be expressed in the form of specific commands which rigidly control the conduct of persons subject to the regulations. Examples include regulations establishing: the allowable pitch of stays in steel plate boilers; the maximum weight which may be supported by a motor vehicle axle on a Massachusetts roadway; and the size of the mesh opening between knots of a net rigged for trawling for a particular species of fish. When possible, however, regulations should give regulated parties flexibility to determine, themselves, how to meet an agency's standards. Performance standards generally lead to more effective regulation than rigid requirements.

Therefore, you should ask yourself, in the initial promulgation stage, whether a proposed regulation must prescribe the exact method by which a regulated party may achieve compliance with your agency's standard. If the regulation does not have to be of the command and control variety, you should draft it in a way which gives regulated parties discretion to determine how to meet the specified standards in the most cost-effective way.

B. Performance Standard Regulations

Regulations which set out performance standard regulations offer the advantage of:

- 1) Giving regulated parties opportunities to realize cost savings with no adverse impact on an agency's mission.
- 2) Rewarding efficient initiatives, thereby encouraging innovations.

<i>PRINCIPLE 10:</i> Where possible, incorporate federal regulations or other professional or technical standards by reference.

The effectiveness of any body of regulations, including the Code of Massachusetts Regulations, generally decreases as it becomes more extensive and detailed. Therefore, you should avoid, where possible, simply repeating a federal regulation or professional or technical standards in a regulation. You may achieve this result by incorporating the regulation or standard by reference within your own regulation.

A. Public Hearing

When a regulation incorporates federal regulation or professional or technical standard by reference, the incorporated regulation or standard must have been, itself, part of a formal public review process.

B. Blending Subsequent Editions of Incorporated Documents

As a general rule, you should not blend subsequent editions of an incorporated document within your regulation by including such language as, “as from time to time amended.” Doing so creates uncertainty if the incorporated document is subsequently modified. Therefore, when incorporating any document by reference, you should incorporate that document in its form as of a precise date.

Example:

In 105 CMR 650.005, the Department of Public Health defined “toxic” as “any substance that produces death within 14 days in half or more than half of a group of...rabbits (each weighing between 2.3 and 3.0 kilograms) when a dosage of more than 200 milligrams but not more than 2 grams per kilogram of body weight is administered by continuous contact with the bare skin for 24 hours by the method described in 16 CFR 1500.40 which is incorporated herein by reference. (Emphasis supplied.)

***PRINCIPLE 11:* Write regulations which minimize the burden of compliance.**

Write regulations so that they impose the minimum burden upon your agency, other agencies and regulated parties without sacrificing the purpose of the regulations. Therefore, always consider whether data required to be submitted is (a) necessary and (b) conveniently obtained. If you determine any particular data is unnecessary, modify your regulations to relieve regulated parties or other agencies from the requirement to submit it. Likewise, if you determine any particular data could be more conveniently obtained, modify your regulations to incorporate this greater efficiency.

In addition, constantly review your regulations to ensure that in each particular case the benefit afforded by the regulation exceeds the costs imposed by that regulation.

SECTION 2

DRAFTING THE REGULATION



PRINCIPLE 12: Write regulations in the most succinct form possible while preserving their clarity.

A. General Considerations

- 1) Write regulations in the most concise form possible. See The Death of Common Sense by Philip K. Howard.
- 2) The more extensive and complex regulations become, the more difficult they are to understand.
- 3) Regulations must also be clear. Do not sacrifice clarity simply for the sake of brevity. Instead, seek the proper balance between succinctness, on the one hand, and comprehensibility, on the other.

B. Unnecessary Material

Exclude all material not essential to that regulation. Information ordinarily not essential to a regulation includes the following:

- 1) Restated statutory language.

Generally, regulations should flesh out statutory provisions and/or clear up statutory ambiguities. They should not simply restate statutory language. Therefore, rather than repeating a statute, you should, ordinarily, cross-reference the statute's citation in your regulation.

In some instances, however, an agency may wish to include statutory language in a regulation to make the regulation a comprehensive explication of all the law relating to a specific activity. Overuse of this practice, however, threatens the progress the Regulation Review Project has achieved.

- 2) Language which suggests or recommends, but does not, in fact, regulate.

- 3) Administrative, internal or ministerial instructions which do not require the force of law.
- 4) Recitations of policy.
- 5) Definitions of words of common usage when used in a regulation in their ordinary sense. For example, 520 CMR 13.00, which deals with the operation of horse drawn carriages for public hire on public ways, defines “horse” as “an animal of genus equus.”
- 6) Repetition of the same definition in multiple sections of a body of regulations.

<p><i>PRINCIPLE 13: Write Regulations in Plain and Readily Understandable Language.</i></p>
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A. Consult A Readability Guide: How to write readable regulations.

In June of 1996, the Regulations Review Project Team, under the auspices of A&F, published a guide entitled, A Readability Guide. This resource provides good information and advice about making your writing readable. You should regularly consult this volume when you draft regulations. If you do not have a copy, you may obtain one from A&F.

B. Avoid Using the Passive Voice of the Verb.

Voice is the form of a verb which indicates whether the subject is the performer of the action (active voice) or is acted upon (passive voice). Passive voice requires more words and is less precise than active voice.

To change passive voice to active voice:

1. Move the subject of the passive sentence behind the verb to become the object of the active sentence.
2. If the passive sentence contains a prepositional phrase beginning with “by,” make the object of that phrase the subject of the active sentence.

Examples:

a) *Passive voice:* The adjusted dates shall be reviewed for accuracy and signed by the Commissioner, or his designee.

Active voice: The Commissioner, or his designee, shall review the adjusted dates for accuracy.

b) *Passive voice:* All summaries of board recommendations must be signed by the board Chairperson and the inmate being reviewed, unless the inmate refuses to sign, in which case such refusal shall be documented.

Active voice: The board Chairperson and the inmate being reviewed must sign all summaries of board recommendations, unless the inmate refuses to sign, in which case the Chairperson shall document such refusal.

c) *Passive voice:* The DSU administrator shall prepare a monthly report on the operation of the departmental segregation unit. This report shall be submitted by the 15th day of the following month to the Commissioner of Correction with a copy to the Deputy Commissioner and the superintendent of the state correctional facility.

Active voice: The DSU administrator shall prepare a monthly report on the operation of the departmental segregation unit and submit the report by the 15th day of the following month to the Commissioner of Correction with a copy to the Deputy Commissioner and the superintendent of the state correctional facility.

d) *Passive voice:* A copy of the report described in 103 CMR 505.13 (1), and a completed form 505-1 shall be submitted to the Director for Operations and Security, by the Superintendent or Special Unit Director in a timely manner.

Active voice: The Superintendent or Special Unit Director shall submit a copy of the report described in 103 CMR 505.13 (1) and a completed form 505-1 to the Director for Operations and Security in a timely manner.

C. Make “Definitions” Section of Regulations Consistent in Style and Punctuation

Under past practice, the format of definitions in the CMR was inconsistent. All future definitions should use the following format:

- 1) Each word or words in an expression or phrase should be capitalized and followed by a period.
- 2) The definition should follow with the first word capitalized and a period at the end.
- 3) Example:

Foster Care. Placement of a child or children in family foster care or a group care facility as defined in 102 CMR 4.02(4) and 4.02(7).

<i>PRINCIPLE 14:</i> Make maintenance of your regulations an integral part of writing any new regulations.

When formulating a new regulation or amending an existing regulation, take steps to ensure that the regulation does not outlive its usefulness. You should:

- A. Establish a process and a schedule for measuring the effectiveness of all of your regulations, rules and guidelines.
- B. Consider including in your rule-making a deadline by which the agency must evaluate and expressly choose to continue each rule or regulation or it will terminate.
- C. Provide regular opportunities for interested and regulated parties to provide input about regulations. Invite these parties to share their observations about any changes in the effectiveness or usefulness of regulations.

Use every occasion that a new mandate, business requirement or other change in procedure causes your agency to consider formulating a rule or regulation as an opportunity to make appropriate changes in your entire assemblage of regulations and sub-regulations.



PRINCIPLE 15: After drafting a regulation, carefully review the draft; give it to others to review.

- A. After drafting a regulation, distance yourself from what you wrote. Subsequently, return afresh to your proposed language. Consider it critically. Determine whether you organized it well, wrote clearly and succinctly and excluded non-essential information.
- B. Give your draft to others to review, asking them to consider and make recommendations to you about its organization, clarity and succinctness. Include people from other agencies that share interest or authority concerning the underlying activity.
- C. Make sure a cross-section of agency personnel reviews the document, including the policy makers and the “business” or “program” people, all critiquing it for readability, as well as for accuracy.

PRINCIPLE 16: Obtain A&F checklist approval before giving public notice.

For any proposed regulatory change, you must complete and submit a Regulation Review Checklist, including an approval and signature of your agency head, to A&F at least two weeks in advance of your intended submission (not publication) of the public review notice or the proposed effective date (in the case of an emergency regulation). A regulatory change includes promulgating a new regulation or amending or rescinding an existing one. A&F will respond to your submission to let you know how to proceed. If you do not have an electronic copy of the checklist, call A&F at 727-2040 to receive one.

Regulation Order 284			
Regulation Review Check List			
Approval			
Approval Level	Title	Signature	Date
Agency Head			
Assistant			
A-67			
Name	Phone	Fax	E-Mail
<p>1. Purpose (What is the purpose of the regulation? What problem does it solve? What is the need for it?)</p> <p>2. Authority (What is the authority for the regulation? What is the legal basis for it?)</p> <p>3. Need (What is the need for the regulation? What is the problem it addresses? What is the impact of the problem?)</p> <p>4. Alternatives (What are the alternatives to the regulation? What are the costs and benefits of each alternative?)</p> <p>5. Feasibility (What is the feasibility of the regulation? What are the resources required? What are the potential obstacles?)</p> <p>6. Impact (What is the impact of the regulation? What are the benefits and costs? What are the distributional effects?)</p> <p>7. Implementation (What are the implementation issues? What are the responsibilities? What are the timelines?)</p> <p>8. Monitoring and Evaluation (How will the regulation be monitored and evaluated? What are the indicators? What are the data sources?)</p> <p>9. Other (Are there any other issues? What are the comments? What are the recommendations?)</p>			

	<h2 style="margin: 0;">Note: For Rescissions and Technical Corrections Issues With No Substantial Costs or Cross-Jurisdictional You May Stop Here.</h2>	
Audience		
Who are the intended readers/users of this regulation? (Check all that apply.)		
<input type="checkbox"/> Your agency staff		
<input type="checkbox"/> Other state agencies		
<input type="checkbox"/> Municipalities		
<input type="checkbox"/> General public		
<input type="checkbox"/> Technical experts		
<input type="checkbox"/> Regulated parties		
Other (Please identify in space provided below.)		

Costs, Benefits & Other Impacts		
Audience: _____ Costs, Benefits & Other Impacts: _____		
<input type="checkbox"/> Your agency		
<input type="checkbox"/> Other state agencies		
<input type="checkbox"/> Municipalities		
<input type="checkbox"/> General public		
<input type="checkbox"/> Regulated parties		
<input type="checkbox"/> Other		
Readability		
Are the proposed changes written clearly and concisely? Have you reviewed the suggestions contained in the "Readability Guide" distributed by the Regulation Review Team? (Check all that apply.)		
<input type="checkbox"/> Used short sentences		
<input type="checkbox"/> Avoided legalese and jargon		
<input type="checkbox"/> Restructured for clarity and consistency		
<input type="checkbox"/> Used active voice		
<input type="checkbox"/> Eliminated gender-specific references		
Alternative for Equations		
What alternative (nonregulatory) means of implementing this policy were considered?		
<input type="checkbox"/> Letter to intended audience		
<input type="checkbox"/> Policy guidelines		
<input type="checkbox"/> Internal operating bulletin		
<input type="checkbox"/> Procedure or instruction		
<input type="checkbox"/> Other		

How do you intend to review the effectiveness of the regulation?		
Date of Review		

SECTION 3

PROMULGATING THE REGULATION



***PRINCIPLE 17:* Work with the Secretary of State's Office.**

G.L. c. 30A, §§5 & 6 invests the Secretary of State with jurisdiction over the procedures governing agency's promulgation of regulations. To assist agencies in understanding and complying with these procedures, the Secretary regularly publishes The Regulations Manual. This manual contains information about obtaining public input in the regulatory process. It also sets out rules relating to formatting and submitting material to the Secretary. In the regulatory process, you should regularly consult the manual and otherwise work with the Secretary's office. If you do not have a copy of the manual, you should obtain one from the Secretary of State's Regulations and Publications Office.

***PRINCIPLE 18:* Involve other agencies in the promulgation process.**

Agencies should make every effort to avoid issuing conflicting or overlapping rules or regulations. Therefore, in addition to involving other agencies and jurisdictions in thinking about and drafting regulations, you should also involve them in the promulgation process. Make sure they know about all opportunities to provide input or to give testimony concerning proposed regulations in which they have an interest.

***PRINCIPLE 19:* Publish a public hearing notice which fully informs interested and regulated parties about the nature and scope of proposed regulatory changes.**

Your notice of a public hearing to adopt, amend or rescind a regulation should provide a clear statement of the time, place and subject matter of the hearing. The following example provides a model of a good notice.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE

NOTICE OF PUBLIC HEARING

Pursuant to the provisions of General Laws Chapter 14, Section 6(I), Chapter 30A, Section 2, and Chapter 119A, Section 1, the Commissioner will hold a public hearing on the following proposed regulation:

830 CMR 119A.6.1: Assessment of Interest and Penalties on Past-Due Child Support.

Scheduled Hearing Date:

Wednesday, February 12, 1997
10:00 A.M.
Conference Room, Room 608B
Leverett Saltonstall Building
100 Cambridge Street
Boston, Massachusetts 02204

Subject Matter:

The proposed regulation implements a provision in M.G.L. c. 119A §6 which authorizes the Department of Revenue to provide by regulation for the assessment of interest and penalties on past-due child support. The proposed regulation sets forth an annual rate of interest and penalties, explains the method of computation and explains the method of distributing interest and penalties collected.

Information:

Copies of the proposed regulation may be obtained from the Department of Revenue, Child Support Enforcement Division, 141 Portland Street, Cambridge, MA 02139. Written comments in advance of the hearing are welcome and should be sent to the attention of Alison L. Kur, Associate Deputy Commissioner, at the above address. All persons desiring to be heard on this matter should appear at the designated time and place.

<i>PRINCIPLE 20:</i> Carefully consider public input before finalizing the regulation.

The public input process provides another opportunity to review not only policy issues, but also the organization, clarity and succinctness of a proposed regulation. Ask yourself, particularly, whether information received in the public input process identifies:

- A. Complex or otherwise unclear regulatory language which should be simplified.
- B. Compliance burdens which could be relieved without sacrificing the purpose of the regulation.
- C. Information which could more effectively be distributed in a sub-regulatory manner.

If the public process identifies a modification in a proposed regulation which could be made without taking away from the regulation's purpose, you should consider making that modification.

WHERE TO GO FROM HERE: RESOURCES AND SUGGESTIONS



A. Important Resources

You should possess or be familiar with the following resources before undertaking any regulation activity:

Secretary of State's <u>The Regulations Manual</u>	Room 2A, Ashburton Place Boston, MA 02108	727-2030
<u>A Readability Guide: How to write readable regulations</u>	A&F, Room 373, State House Boston, MA 02133	727-2040
<u>Cost-Benefit Analysis and Other Strategies for Effective Regulations</u>	A&F, Room 373, State House Boston, MA 02133	727-2040
<u>Regulation Review Project: An Interim Report</u>	A&F, Room 373, State House Boston, MA 02133	727-2040
Brown Bag Luncheon Handout on Sub-Regulations	A&F, Room 373, State House Boston, MA 02133	727-2040
Regulation Review Checklist	A&F, Room 373, State House Boston, MA 02133	727-2040
Philip K. Howard's <u>The Death of Common Sense</u>	Warner Books, © 1994	

B. Maintenance of Regulations

Generally, agencies engage in rule-making only in response to new mandates, business requirements or other procedural changes. You should avoid rule-making in this piecemeal fashion. Otherwise, rules may become inconsistent with one another and may outlive their usefulness.

Instead, you should review your entire body of regulations at least triennially, rescinding outdated provisions and amending unclear or inconsistent ones, making sure that all of your regulations blend harmoniously together.

In conducting these reviews, you should also update your systems, policies, guidelines and other sub-regulations to ensure that all of your rule-making operates coherently.

C. Cross-Jurisdictional Issues

You should constantly seek out opportunities and methods to coordinate your rule-making activities with other agencies. With cooperative effort, agencies can conduct their rule-making more efficiently and minimize the regulatory burden on regulated parties.

D. Internet

You should take advantage of the inexpensive and accessible communication capability offered by the Internet. In addition to posting regulations and sub-regulations, you should also post applications and forms on the Internet, permitting regulated parties to fill out and submit these documents electronically.

E. Cost-Benefit Analysis

You should always consider the costs and benefits of your rule-making.

Admittedly, performing accurate cost-benefit analyses may be difficult. Calculations may require complicated and sophisticated study and examination.

Do not become discouraged. Learning to conduct such investigations effectively does not happen immediately. It is a skill developed incrementally. The longer and harder you work at it, the more capable you will become.

However, cost-benefit analyses are critical to effective regulating. Therefore, you should always strive to increase your competence to perform them and to make these studies an inherent part of all your rule-making.

F. Improving the Rule-Making Process; Suggestions, Examples

This Primer has been prepared to preserve the excellent results of the Regulation Review Project, principally by maintaining use of the revised rule-making process developed by the Review Team. This process, with its emphasis on working through a checklist, incorporates a careful consideration of all the important elements of rule-making in the promulgation procedure.

Improving rule-making in Massachusetts should be an on-going project, not a one-time event. Therefore, as you work with the review process, constantly look for ways to better it. If you discover a good example of a rule-making element or technique or if you have an idea or a suggestion about how the process could be improved, please communicate it to A&F and share it with your colleagues. In this way, you will ensure that the rule-making process in Massachusetts is an evolving one, constantly becoming better.

**BY HIS EXCELLENCY
WILLIAM F. WELD
GOVERNOR**

**EXECUTIVE ORDER NO. 384
TO REDUCE UNNECESSARY REGULATORY BURDEN**

WHEREAS, government regulations are intended to protect essential public health, safety, environmental and welfare functions and to protect citizens from the unwarranted exercise of power by public officials;

WHEREAS, many of the regulations adopted by state government agencies have, in fact, impeded the public welfare and imposed unnecessary cost, burden and complexity;

WHEREAS, there has been a vast increase in the number and complexity of permits, licenses, certificates and other approvals that individuals and organizations must obtain from an increasing number of government agencies in order to undertake commercial, industrial, and person projects or activities in the Commonwealth;

WHEREAS, many of these regulations are difficult to understand, and duplicate or may conflict with other regulations;

WHEREAS, the inefficiencies and intrusions resulting from excessive government regulation constitute an unreasonable financial and personal burden on residents of the Commonwealth;

WHEREAS, unnecessary and inconsistent government regulation inconveniences individuals, inhibits business growth and the creation of jobs, and places Massachusetts industries at a competitive disadvantage relative to their out-of-state and foreign competitors; and

WHEREAS, the citizens of the Commonwealth will be better served by reducing the number, length, and complexity of regulations, leaving only those that are essential to the public good;

NOW, THEREFORE, I, WILLIAM F. WELD, Governor of the Commonwealth of Massachusetts by virtue of the authority vested in me as Supreme Executive Magistrate, do hereby order and decree that:

- 1. Each Secretariat, agency, department, board, commission, authority or other body within the Executive Department under my supervision (hereinafter "Agency") shall promptly undertake a review of every regulation currently published in the Code of Massachusetts Regulations under its jurisdiction.*
- 2. Except as provided below, each Agency shall sunset all its regulations on or before December 31, 1996 by taking such steps as are required by law (including pursuant to chapter 30A of the General Laws) to rescind, revise, or simplify such regulations, after conducting the review prescribe in this Order.*
- 3. In conducting such review, only those regulations which are mandated by law or essential to the health, safety, environment or welfare of the Commonwealth's residents shall be retained or modified. In order to find that regulation meets this standard, the Agency must demonstrate, in its review, that: (a) there is a specific need for governmental intervention that is clearly identified and precisely defined; (b) the costs of the regulation do not exceed the benefits that would be effected by the regulation; (c) less restrictive and intrusive alternatives have been considered and found less desirable based on a sound evaluation of the alternatives; (d) the Agency has established a process and a schedule for measuring the effectiveness of the regulation; (e) the regulation is time-limited or provides for a regular review. Regulations not meeting this standard shall be rescinded in accordance with law.*
- 4. In its review, each Agency shall ensure that every regulation is clear, concise and drawn in plain and readily understandable language.*
- 5. Agencies are required to promulgate the shortest and simplest regulations necessary to achieve the purposes of such regulations. In the review required by this Order, each Agency shall demonstrate how this objective has been achieved.*
- 6. Beginning immediately, no Agency shall promulgate a new regulation which has not been reviewed pursuant to this Order and does not meet the standards set out in this Order. Any such regulation must also be approved pursuant to such standards, terms and schedules as the Secretary of Administration and Finance shall establish under paragraph 8 or this Order.*
- 7. Each Agency head, including Cabinet Secretaries, shall appoint a senior official who shall be the contact person for all actions and reviews pursuant to the Executive Order. The Agency head may, but need not, designate herself or himself as the contact person.*
- 8. The Secretary of Administration and Finance shall, consistent with the requirements of law, establish such standards, terms and schedules as he deems appropriate and necessary to accomplish the reviews of existing and newly proposed regulations as required by this Order. The Secretary of Administration and Finance may also provide for such waivers or exceptions as are essential for the public health, safety, environment or welfare.*

Given at the Executive Chamber in Boston this 7th day of February, one thousand nine hundred ninety six.

